

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RHONDA WARHURST
Claimant

VS.

SALINA REGIONAL HEALTH CENTER
Self-Insured Respondent

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Docket No. 1,065,632

ORDER

Claimant requested review of the March 24, 2014, Award by Administrative Law Judge (ALJ) Bruce E. Moore. At the request of the parties, this matter was placed on the Board's Summary Calendar, to be decided upon the briefs, without oral argument.

APPEARANCES

Scott M. Price, of Salina, Kansas, appeared for the claimant. Dustin J. Denning, of Salina, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ denied claimant's request for compensation after finding claimant failed to prove she suffered personal injury by repetitive trauma, that repetitive trauma from work activities was the prevailing factor in the development of her injuries, or that her injuries arose out of and in the course of her employment.

Claimant appeals arguing she has met her burden of proof she suffered personal injury by repetitive trauma arising out of and in the course of her employment and that her employment was the prevailing factor in causing her injuries. Claimant also argues she is entitled to temporary total disability benefits from May 30, 2013, through October 2, 2013, to have her past medical bills paid, to future medical benefits, and to a 15 percent

permanent partial functional impairment to the right upper extremity at the level of the shoulder.

Respondent contends claimant has failed to sustain her burden of proof that her work for respondent is the prevailing factor in causing her shoulder injury, therefore the Award should be affirmed.

The issues on appeal are:

1. Did claimant meet with personal injury by accident through repetitive trauma through May 30, 2013?
2. Was the repetitive trauma from claimant's work duties for respondent the prevailing factor causing claimant's injuries, medical conditions and resulting disability or impairment?
3. Did claimant suffer permanent disability as the result of her personal injury by accident?

FINDINGS OF FACT

Claimant began working for respondent in 1988. For the last eight or nine years she has worked in the linen department. Part of claimant's job in the linen department is to take dirty linens to the freight elevator. She also takes the nursery, baby and delivery carts, loaded with clean linens to the 6th floor. Claimant is responsible for making sure there are clean linens in all of the carts, so she replaces carts loaded with dirty linens with carts containing clean linens. Claimant ensures that carts with the gowns, scrubs, and blue surgical rags are stocked. Claimant also cleans bathrooms, break rooms, and the utility room. The jobs described by claimant involve the use of her arms.

In January 2013, claimant's work duties changed and she was required to load all of the dirty linen carts in the freight elevator for the linen company to unload every morning. This meant claimant had anywhere from 9 to 20 carts to handle each day. Claimant testified currently there are three people in laundry. Before the January 2013 change, there were 12 people in the laundry.

Claimant initially injured her right shoulder on July 11, 2009. She reported this to respondent and was sent for x-rays and was put on light duty for two weeks. She received physical therapy. Claimant was released from that injury on August 12, 2009, to full duty.

Claimant claims repetitive trauma to her right shoulder from her work duties starting seven or eight years and ago and culminating in May 2013. Claimant most recently noticed problems with her shoulder in January or February of 2013, and things got worse after that. Claimant testified her pain felt like the arthritis pain she had in her knee.

Claimant testified that on April 29, 2013, MRI confirmed, claimant had a torn rotator cuff. Claimant was also diagnosed with moderate osteoarthritis of the acromioclavicular joint and mild osteoarthritis of the glenohumeral joint. After being informed of the results of the test, claimant went to respondent and filled out an Employee Incident Report on May 7, 2013.

Claimant had surgery on her right shoulder with Dr. Daily on May 30, 2013. Claimant was released by the doctor to return to light duty on August 21, 2013. Claimant informed respondent of this, but respondent would not allow her to return until she was released for full duty. Claimant indicated she has had vast improvement in her shoulder since surgery. She returned to work on October 2, 2013.

Despite the pain in her shoulder, claimant was able to continue with her activities of daily living, but she did have problems performing her work duties, like pulling the heavy linen carts. She was able to vacuum, sweep and mop. Claimant testified she splits the household chores with her husband 50-50.

Barbara Herrman has been employed by Salina Regional Medical Center since June 29, 1992. For the last 12 years, her position has been Employee Health Coordinator. Ms. Herrman's job duties are to assist with new employee training, take care of TB skin testing and immunizations for employees and arrange for workers compensation care for injured employees. Ms. Herrman assists employees in filling out incident reports and then forwards the reports to a third party administrator for a determination whether an injury was compensable.

Ms. Herrman testified claimant filled out an incident report on May 7, 2013. On the report, claimant wrote she was injured pulling and pushing heavy linen carts and unloading heavy carts from the freight elevator. Ms. Herrman noted claimant was having right shoulder surgery on May 30, 2013, to repair the injured rotator cuff. Ms. Herrman also wrote claimant inquired as to what she needed to do in order for the surgery with Dr. Daily to be covered. Ms. Herrman told claimant the paperwork would be submitted, but she would not be able to give approval for surgery until the matter was investigated and signed off on by the third party administrator.

Ms. Herrman confirmed that part of claimant's job is to move carts around the hospital. She has no personal knowledge of how much each cart weighs, although claimant submits they were 600 pounds or more. Claimant is also responsible for laundering mops and rags. She only collects dirty linens, gowns, scrubs, etc to be sent off for cleaning.

Ms. Herrman testified it was her understanding that claimant's claim for compensation was denied by respondent's third party administrator because her injury was considered an aggravation of a previously injured body part. Ms. Herrman acknowledged that in the time she has known claimant, claimant has been able to perform her job duties.

She also spoke with claimant's supervisors, who indicated they were not aware of claimant having any issues with her work. At the time of Ms. Herrman's deposition, claimant had returned to work for respondent performing the same job duties she did prior to suffering her reported injuries.

Claimant first met with board certified orthopedic surgeon, Bradley C. Daily, M.D., for the injury to her right shoulder on April 24, 2013. Claimant presented with more than a year history of right shoulder pain and weakness and no history of trauma or injury that she recalled. Claimant reported her shoulder pain was affecting her job as well as her activities at home. She was unable to raise her arm and had nighttime discomfort. He diagnosed right shoulder pain with rotator cuff weakness. He was also suspicious of a rotator cuff tear. An MRI confirmed the tear and surgery was performed on May 30, 2013. During surgery, Dr. Daily identified a linear split in the fibers of the rotator cuff. He testified that a more typical rotator cuff tear would be more U shaped where it was pulled away from the bone, but claimant's had more of a spiked appearance, with splitting of some of the tendons along the fibers. He determined claimant's tear had been there for more than one, but less than two years.

During the surgery, Dr. Daily noted an anterior acromial spur which he described as large and sharp. He determined this spur was in the region where it could rub and irritate the rotator cuff tendon. He noted it is a very common finding for the spur to rub on the rotator cuff. However, he was unable to say with medical probability that the spur did the damage in this instance. Claimant was released to full duty with no restrictions on October 2, 2013.

In a letter dated October 18, 2013, Dr. Daily noted claimant had an excellent recovery post surgery. Using August 2012 through May 30, 2013, as a time line, Dr. Daily opined claimant's first onset of shoulder symptoms was prior to any August 2012 workplace injury. He did not feel that a workplace injury was the prevailing factor for claimant's shoulder problems. He acknowledged that working in a hospital laundry requires some manual work, as well as overhead work and could be an aggravating factor to claimant's preexisting condition. His opinion in this could change if there was a well documented workplace injury that could be referred to as the onset of the symptoms, but he did not have that information.

Claimant last met with Dr. Daily on December 2, 2013, at which time claimant had excellent range of motion. She had mild decreased strength with forward flexion and abduction testing. Dr. Daily opined this was typical to see six months post surgery. He expected to see improvement down the line, but noted there would always be mild weakness. Based on this examination, Dr. Daily found claimant to have a 9 percent impairment to the right upper extremity at the shoulder.

At the request of claimant's attorney claimant met with board certified physical medicine and rehabilitation specialist, George Fluter, M.D., on September 25, 2013, for an

examination. Claimant reported a strain of the right upper extremity in 2009, which resolved without injections or therapy. Claimant's complaints at the time of this visit were pain affecting the right shoulder. Dr. Fluter testified there was some indication in claimant's records that she had had a right shoulder rhomboid strain sometime around 2003. Claimant also indicated she had a right upper extremity trapezius strain sometime around 2009. These injuries were treated and resolved.

Dr. Fluter examined claimant and found claimant to have right shoulder pain due to repetitive activities from August 2012 to May 30, 2013, right upper extremity repetitive use/cumulative trauma disorder, right shoulder pain/impingement/tendonitis/bursitis, right shoulder internal derangement, and status post May 30, 2013, right shoulder surgery.

Dr. Fluter opined, based on the available information, there is a causal/contributory relationship between claimant's current condition and repetitive work-related activities involving the upper extremities and their sequelae. He found the nature and intensity of these work-related activities to be over and above those associated with activities of daily living. Claimant's heavy work activities resulted in microscopic injury to the involved structure, including the ligaments, tendons and muscles of the shoulder region. The repeated microtraumas led to tearing of the rotator cuff which required medical treatment up to and including surgery.

Dr. Fluter opined the prevailing factor of claimant's current condition and need for medical evaluation and treatment is the reported work-related activities involving the upper extremities. He assigned a 15 percent permanent partial impairment to the right upper extremity, based upon the *AMA Guides*, 4th ed.¹

Dr. Fluter indicated there was no real way of knowing if claimant's rotator cuff tore slowly over time or whether it was from an acute event or acute injury. He testified the most common scenario would be if someone had a sudden onset of pain and weakness in the shoulder, which would indicate an acute tear as opposed to more gradually increasing pain and dysfunction at the shoulder. This was his understanding upon review of Dr. Daily's records. He opined, based on the records he has seen, claimant's history is more compatible with a gradual, rather than sudden, impact of pain and dysfunction in the shoulder. At the time of the examination of claimant by Dr. Fluter, she remained in treatment with Dr. Daily.

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2012 Supp. 44-501b(a)(b)(c) states:

(a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2012 Supp. 44-508(e) states:

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

(1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;

(2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;

(3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or

(4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

K.S.A. 2012 Supp. 44-508(f)(1)(2)(A) states:

(f)(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by

accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor.

An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

- (i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;
- (ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and
- (iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

The ALJ determined claimant's alleged injury to her right shoulder did not arise out of her employment with respondent. Based upon the opinion of Dr. Daily, claimant's treating physician, the condition was degenerative in nature, the product of the natural aging process. The factual and legal analysis of the ALJ is well set out and the Board adopts the same as its own.

While claimant's expert, Dr. Flutter, provided a contrary opinion, the Board finds, as the treating physician, Dr. Daily's analysis and opinion carries the most weight and is the most persuasive in this instance.

Claimant failed to prove that she suffered personal injury by repetitive trauma to her right shoulder which arose out of and in the course of her employment with respondent. The denial of benefits by the ALJ is affirmed.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant has failed to prove the injuries suffered to her right shoulder arose out of and in the course of her employment with respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated March 24, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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